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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,138	12/15/2003	Thomas E. Creamer	BOC9-2003-0081 (455)	3693
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Novak Druce + Quigg LLP CityPlace Tower, 525 Okeechobee Blvd. Fifteenth-Floor WEST PALM BEACH, FL 33401			EXAMINER PATEL, HEMANT SHANTILAL	
			ART UNIT 2614	PAPER NUMBER
			MAIL DATE 02/18/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/736,138	<b>Applicant(s)</b> CREAMER ET AL.	
	<b>Examiner</b> HEMANT PATEL	<b>Art Unit</b> 2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12/19/2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. Applicant's submission filed on December 19, 2008 in response to Office Action dated November 7, 2008 has been entered. Claims 1-5 are pending in this application.

### *Response to Arguments*

2. Applicant's arguments filed December 19, 2008 have been fully considered but they are not persuasive.

3. **Regarding claim 1**, the Applicant argues "However, in Walters the markings do not mark the beginnings or endings of particular types of audio content" (Remarks, pg. 5 ll. 4-5). The Examiner respectfully disagrees. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., particular types) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The claim merely recites "various types". Walters clearly teaches that the contents marked are particular types of audio contents (Walter, col. 28 ll. 14-17). Regarding the Applicant argument "Further, it is noted that in Walters the markings are not used to demarcate different types of audio content within a single audio file as in the present invention" (Remarks, pg. 5 ll. 9-11), the Examiner respectfully disagrees. Walter clearly teaches that this composite audio program is stored in the memory or database i.e. stored as one file (Walters, col. 28 ll. 2-5).

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4. For above reasons, the Applicant arguments are not persuasive, and the claims are reproduced below, with added explanation as above, for the Applicant's convenience.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 4-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Walters (US Patent No. 6,453,281 B1).

***Regarding claim 1,*** Walters teaches of a method of marking various types of audio content within an audio file (col. 28 ll. 2-5 stored as composite audio in database) comprising:

for each type of audio content (col. 27 ll. 15-20 type of lecture provided by each professor, col. 28 ll. 14-17 different types of audio contents), defining a set of audio tags comprising an opening tag (Fig. 28, S1, S2, S3) and a closing tag (Fig. 28 corresponding E1, E2, E3);

associating the set of audio tags with a corresponding type of audio content (S1-E1 with SP1, S2-E2 with SP2, S3-E3 with SP3);

marking a starting location of the corresponding type of audio content within the audio file using the opening tag (S1 for SP1, S2 for SP2, S3 for SP3); and

marking an ending location of the corresponding type of audio content within the audio file using the closing tag (E1 for SP1, E2 for SP2, E3 for SP3) (col. 26 ll. 44-col. 28 ll. 39).

**Regarding claim 4**, Walters teaches of storing audio file in storage as digitized voice file (col. 9 ll. 10-24).

**Regarding claim 5**, Walters teaches of content including voice prompts (col. 27 ll. 46-52, ll. 55-60).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walters as applied to claim 1 above, and further in view of Hamel (US Patent No. 5,943,402).

**Regarding claims 2, 3,** Walters does not clearly teach of storing the tags (S1, S2, S3, E1, E2, E3) in the form of tones or waveform shapes in the file.

However, in the same field of endeavor, Hamel teaches of a method and a system to indicate and store in the audio file an acoustic bullet in the form of a tone (and hence its distinct waveform shape based on the specific frequency of the tone) and corresponding annotation to indicate the type of content in the audio file (Fig. 1 for system; Figs 2A-2G for method and Figs. 3A-3B for audio file and their corresponding descriptions).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Walters to use tones to indicate the type of content in the audio file as taught by Hamel in order to allow the user to manipulate audio content remotely using the ubiquitous keypad from a remote telephone.

### **Conclusion**

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HEMANT PATEL whose telephone number is (571)272-8620. The examiner can normally be reached on 8:00 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang can be reached on 571-272-7547. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner  
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